361

SUPREME COURT OF THE UNITED STATES.

No. ~~79~~. 47. 12.

WILLIAM KELLOGG, PLAINTIFF IN ERROR,

v.

ROBERT FORSYTH.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

363

SUPREME COURT OF THE UNITED STATES.

No. 79.

WILLIAM KELLOGG, PLAINTIFF IN ERROR,

v.

ROBERT FORSYTH.

INDEX.

	Original.	Print.
Declaration,	1	3
Notice,	3	4
Security for Costs,	4	5
Judgment,	8	7
Judgment vacated and set aside,	10	8
Jury sworn,	11	9
Verdict,	11	9
Bill of Exceptions,	13	10
Plat,	14	10
"	17	11
Appeal Bond,	32	20
Writ of Error,	34	21

	Original.	Print.
Assignment of Errors,	36	21
Affidavit of Charles Ballance,	37	22
Writ of Error,	39	24
Bond,	40	24
Citation and Service,	42	25
Certificate,	45	26

United States of America, Northern District of Illinois.

Pleas in the Circuit Court of the United States for the Northern District of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. John McLean, one of the Justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, Judge of the District Court of the United States for the Northern District of Illinois, associate:

On Thursday, the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first year.

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

Be it remembered, that heretofore, to wit, on the 22d day of December, in the year of our Lord, eighteen hundred and fifty-four, in the December term, A. D. 1854, of the Circuit Court of the United States, for the District of Illinois, came into court the said Robert Forsyth, plaintiff, by Williams & Lawrence, his attorneys, who filed in open court his declaration and notice and bond for costs in said entitled cause, in the words and figures following, to wit:

United States of America, State and District of Illinois.

Circuit Court of the United States, December Term, A.D. 1854.

Robert Forsyth, the plaintiff in this suit, who is a citizen of the State of Missouri, one of the United States of America, complains of William Kellogg, defendant in this suit, who is a citizen of the State of Illinois, in the United States of America, of a plea whereof he, the said defendant, with force and arms, &c., entered into the following described premises: For that, whereas, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiff was possessed of certain premises, situated at and within the County of Peoria, District and State of Illinois, and described as follows, to wit: A part of claim numbered seven, in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsyth, by an act of Congress, approved March 3d, A. D. 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," com-

mencing at the most easterly point or corner of said claim or lot No. seven, at the point where First street and the cross street "B." intersect each other; thence along First street and the southeasterly line of said claim eighty-two feet; thence at right angles with First street, and parallel with the cross street at "B.," one hundred and one feet to Water street, as laid off in Bigelow & Underhill's addition to Peoria; thence along the lower or southeasterly edge of Water street, seventy-eight feet to cross street "B.;" thence along said cross street "B.," ninety-two feet to the place of beginning. It being a part of lots one and two, in block No. fifty, in Bigelow and Underhill's addition to Peoria.

And the said plaintiff being then and there so possessed of said premises, he the said defendant afterwards, to wit, on the second day of November in the year aforesaid, entered into the said described premises, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold the possession of the said premises from the said plaintiff. And the said plaintiff avers that he claims the title to the said premises in fee simple, and that the said plaintiff is a citizen and inhabitant of the State of Missouri, in the United States of America, and that the said defendant is a citizen and inhabitant of the State of Illinois, in the United States of America; and the said plaintiff further avers that the value of the aforesaid premises being the matter in dispute, exceeds, exclusive of costs, the sum of five hundred dollars, wherefore the said plaintiff says he is injured, and has sustained damage to the amount of five hundred dollars, and therefore he brings suit, &c.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiffs.

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which copy this notice is subjoined, will be filed in the Circuit Court of the United States for the District and State of Illinois, on the first day of the December term, A.D. 1854, or as soon thereafter as counsel can be heard, and that upon filing the same, a rule will be entered requiring you to appear and plead to the said declaration, within twenty days after the entry of said rule, and if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 16th day of November, A.D. 1854.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

United States of America, State and District of Illinois.

Circuit Court of the United States, December Term, A.D. 1854.

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Eectment.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this sixteenth day of November, A.D. 1854.

GEORGE W. FRIDLEY.

State of Illinois, County, *ss.*

Circuit Court of the United States, State and District of Illinois.
December Term, A.D. 1854.

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Ejectment.

M. R. Owen being duly sworn, deposes and says, that he did, on the 18th day of November, A.D. 1854, personally serve William Kellogg, the defendant in this suit, who is the actual occupant of the premises, for which this action is brought, with a true copy of the declaration hereto annexed, and also a true copy of the notice in writing to the said declaration subjoined, and likewise hereunto annexed. And further this deponent saith not.

M. R. OWEN.

Sworn and subscribed to before me, this 21st day of February, A.D. 1856.

WM. H. BRADLEY,
Clerk.

Personally served on William Kellogg, the defendant in this suit, who is the actual occupant of the premises, for which this action is brought, with a true copy of the declaration hereto annexed, and also a true copy of the notice in writing to the said declaration subjoined and likewise annexed.

Peoria, November the 18th, A.D. 1854.

HARRY WILTON,
U. S. Marshal, District of Illinois.
By M. R. OWEN,
Deputy Marshal.

Indorsed: Filed Dec. 22d, 1854. Wm. Pope, clerk.

And afterwards, to wit, on the 23d day of December A.D. 1854, in the record of the proceedings of said Circuit Court for said District of Illinois, in the above-entitled cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

This day came the plaintiff, by his attorneys, and filed his declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiff, by his said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, the said defendant, by C. Ballance, his attorney, filed in said court his motion, in the words and figures following, to wit:

WILLIAM KELLOGG
ads.
ROBERT FORSYTH. } In Ejectment.

Said defendant moves the court to set aside the rule herein obtained, for the reason that no affidavit of the service of said declaration and notice was filed or produced.

C. BALLANCE,
Defendant's Attorney.

And afterwards, to wit, on the 10th day of July, in the July term, A.D. 1855, of said Circuit Court for the Northern District of Illinois, the said defendant, by his attorney, filed in said court, with the clerk thereof, his plea, in the words and figures following, to wit:

In the Circuit Court of the Northern District of Illinois.
July Term, 1855.

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Ejectment.

Said defendant comes and defends, &c., and says he is not guilty of the trespass and ejectment in said declaration charged against him, in manner and form as the same is therein and thereby set forth and alleged. And of this he puts himself upon the country, &c.

C. BALLANCE.

Indorsed: Filed July 10th, 1855. Wm. H. Bradley, clerk.

And afterwards, to wit, on the same day, to wit, on the 10th day of July, in said July term, A.D. 1855, of said Circuit Court for said Northern District of Illinois, in the record of the proceedings thereof, in said cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

Now at this day came the parties, by their attorneys, and upon issue joined, by agreement of the parties, by their attorneys, they waive the intervention of a jury, and for trial put themselves upon the court, and after proceeding with the trial of the cause until the hour of adjournment, the further trial of the cause is postponed until to-morrow morning.

And on the next day, to wit, on the 11th day of July, in said July term, A.D. 1855, of said Circuit Court, in the record of the proceedings thereof, in said cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

Now, at this day, came again the parties, by their attorneys, and after hearing the remainder of the evidence, and the arguments of counsel, the court, not being now sufficiently advised upon the issue submitted herein, take time to consider.

And on the next day, to wit, on the 12th day of July, of said July term, A.D. 1855, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

The court having now fully considered, and being now fully advised upon the issue heretofore submitted in this cause, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the land and premises described in the plaintiff's declaration, to wit, a part of a claim numbered seven, in the village (now city of Peoria), county of Peoria, and State of Illinois, as confirmed to Thomas Forsyth, by an act of Congress, approved March 3d, A.D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," commencing at the most easterly point or corner of said claim, or lot No. seven, at the point where First street and the cross street "B." intersect each other; thence along First street and the southeasterly line of said claim

eighty-two feet; thence at right angles with First street, and parallel with the cross street "B.," one hundred and one feet, to Water street, as laid off in Bigelow and Underhill's addition to Peoria; thence along the lower or southeasterly edge of Water street, seventy-eighty feet, to cross street "B."; thence along said cross street "B." ninety-two feet, to the place of beginning, it being a part of lots one and two, in block No. fifty, in Bigelow and Underhill's addition to Peoria.

The court also find the estate established in the plaintiff on the trial, to be an estate in fee simple, and assess the plaintiff's damages at the sum of one cent. It is thereupon considered and adjudged by the court, that the plaintiff have and recover against the defendant, the possession of the above-described land and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and also, that he have and recover of the defendant, his said damages of one cent, as aforesaid, assessed together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

And afterwards, to wit, on the 2d day of February, A.D. 1856, said defendant by his attorneys, filed in said court, with the clerk thereof, his motion, in the words and figures following, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Ejectment.

Defendant moves the court to set aside the verdict herein, and grant a new trial, for the reason that the trial was had without the intervention of a jury, and on that account, the Supreme , it is presumed, will not review the case.

C. BALLANCE,
For Defendant.

Indorsed: Filed Feb'y 2d, 1856, Wm. H. Bradley, clerk.

And afterwards, to wit, on the 12th day of February, A.D. 1856, of the December term, A.D. 1855, of said court, in the record of the proceedings thereof in said cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

The court sustains the motion of the defendant, heretofore made herein by his attorney, for a new trial of this cause, upon the payment by the defendant of the costs of the cause; and it is continued to the next term.

And afterwards, to wit, on the 24th day of July, of the July term, A.D. 1856, of said court, in the record of the proceedings thereof in said cause, is the following entry, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } Ejectment.

Now at this day, came the parties by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit: H. M. Bogges, Samuel Dimon, M. Taggart, Elisha Putnam, David J. Mixer, Rufus Ordway, William McKee, Thomas Barnett, Peter Stout, Daniel P. Holt, D. Johnson, and John Brown, who were duly elected, tried, and sworn, and after hearing the evidence and receiving instructions from the court, the jury returned the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff, the land and premises described in his declaration; being those certain premises situated in the county of Peoria, in the State of Illinois, and described as follows, to wit: a part of claim number seven, in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsyth, by an act of Congress, approved March 3d, A.D. 1823, entitled "An act to confirm certain claims in the village of Peoria, in the State of Illinois, commencing at the most easterly point or corner of said claim or lot number seven, at the point where First street and the cross-street B. intersect each other; thence along First street, and the southeasterly line of said claim, eighty-two feet; thence at right angles with First street, and parallel with the cross-street B., one hundred and one feet to Water street, as laid off in Bigelow and Underhill's addition to Peoria; thence along the lower or southeasterly edge of Water street, seventy-eight feet to cross-street B.; thence along said cross-street B. ninety-two feet, to place of beginning. It being a part of lots one and two, in block number fifty, in Bigelow and Underhill's addition to Peoria. We also find the estate established in the plaintiff, to be an estate in fee simple, and we assess the damages of the plaintiff at the sum of one cent.

It is thereupon ordered and adjudged by the court, that the plaintiff have and recover of and from the said defendant, possession of the said described land and premises, according to the form, force, and effect of his said recovery; and that he have a writ of possession therefor. And that he also have and recover of the said defendant, the sum of one cent, his damages as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

And afterwards, to wit, on the 6th day of August, A.D. 1856, said defendant, by his attorney, filed in said court, with the clerk

thereof, his bill of exceptions, in the words and figures following, to wit:

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Ejectment.

Be it remembered, that upon the trial of this cause, the plaintiff, to maintain the issue on his part, gave in evidence:

1st. An act of Congress, dated May the 15th, 1820, for the relief of the inhabitants of the village of Peoria.

2d. An act of Congress, approved March 3d, 1823, on the same subject.

3d. He offered to read from a printed book, called 3d vol. of American State Papers, prepared by Walter Lowry, under a resolution of the United States Senate, and printed by Duff Green, part of the report of Edward Coles, register of the land office at Edwardsville, to the secretary of the treasury, concerning the Peoria French claims.

To the reading of which defendant objected, because there is no law making said book evidence; but the court overruled said objection, and the part of said report from said book was read to the jury, referring to this claim.

4th. He then offered in evidence a connected plat of all said French claims, and a separate plat of lot No. 7 of said report. By the said survey, made in pursuance of said act of 1823, lot seven was located on the land in dispute. Said plats were approved on the first day of September, 1840, by the surveyor-general of Illinois and Missouri. The certificate showing the authenticity of said plats was in these words.

(For plat, see original, p. 14.)

Claim, No. 7. Situate in the southeast fractional quarter of fractional section 9, in fractional township 8 north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Thomas Forsyth by an act of Congress, approved the 3d of March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being No. 7 of the report made by the register of the land office at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

Description.—Commence at a post at the intersection of the S.W. edge of the cross-street B. with the N. W. edge of First street, which post is the east corner of this lot; thence with the N. W. edge of First street, S. $43\frac{1}{2}°$ W. 40 feet, a post and a stone set by it; 235 feet 3 inches and $\frac{1}{3}$ of an inch, to a post, the east corner of the sur-

vey of claim No. 14, 320 feet 10 inches, the south corner of this lot and of the survey of claim No. 14, and the east corner of lot No. 2; thence N. 46½° W. 320 feet 10 inches to a post in the S. E. edge of Second street, the west corner of this lot, and of the survey of claim No. 14, and north corner of lot No. 2; thence with the S. E. edge of Second street, N. 43½° E. (85 feet 6 inches and ⅔ of an inch, to a post, the north corner of the survey of claim No. 14), 320 feet 10 inches, to a post, at the intersection of the S. E. edge of Second street, with the S. W. edge of the cross-street B., which post is the north corner of this lot; thence with the S. W. edge of the cross-street B., S. 46½° E., 320 feet 10 inches, to the place of beginning.

This lot, as surveyed, and here described, contains 102,933 square feet, and $\frac{93}{100}$ of a square foot, and includes the survey of the claim No. 14, confirmed to Jacques Mette, as represented on the plat.

Surveyed on the 29th of April, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved, this first day of September, 1840.

(Signed) WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
ST. LOUIS, 19th September, 1854.

I, John Loughborough, surveyor-general for Illinois and Missouri, do hereby certify that the foregoing is correctly copied from page 7 of the book of Records of Surveys in Peoria, Illinois, in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

(For plat, see original, page 17.)

Plat of the new village of Peoria, and such of the out lots and field lots, in the neighborhood thereof, as are connected with said new village, in one continuous survey and description of the out boundaries of the said town, and continued connection of out lots and field lots, situate on sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian.

Description.

Begin at the upper end of the southeastern edge of First street, on the northwest bank of Lake Peoria; thence N. 46½° W. one hundred feet, to the eastern corner of unclaimed lot A. 420 feet 10 inches, the north corner of said unclaimed lot A., at the northeast end of the S.E. edge of Second street, 486 feet 10 inches, to the N.E. end of the N.W. edge of Second street; thence S. 43½° W. with the N.W. edge of Second street, 256 feet 8 inches, to the inter-

section with the N.E. edge of street A.; thence N. 46½° W. with the N.E. edge of street A. 320 feet 10 inches, to the N.W. end of the N.E. edge of said street A.; thence S. 43½° W. 66 feet, the north corner of lot No. 66, at the N.W. end of the S.W. edge of said street A. 108 feet 9½ inches, the west corner of lot No. 66 and north corner of unclaimed lot C. 322 feet 8 inches, the west corner of unclaimed lot C. and the north corner of lot No. 12, 408 feet 2⅔ inches, the west corner of lot No. 12 and the N.W. end of the N.E. edge of street B. 474 feet 2⅔ inches, the N.W. end of the S.W. edge of street B. and the north corner of lot No. 8, 709 feet 6 inches, the north corner of lot No. 15, 795 feet and ⅔ of an inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15, and east corner of lot No. 61, and north corner of lot No. 28; thence N. 46½° W. with the N.E. boundary of lot No. 61, 15 chains and 40 links, to the north corner of lot No. 61; thence with the N.W. boundary of lot No. 61, S. 43½° W. 5 chains and 52½ links, to the west corner of lot No. 61; thence with the S.W. boundary of lot No. 61, S. 46½° E. 4 chains and 94 links, to the north corner of lot No. 51, at the intersection of the N.W. boundary thereof with the S.W. boundary of lot No. 61; thence with the N.W. boundary of lot No. 51, S. 43½° W. 4 chains and 88 links, to the west corner of lot No. 51; thence with the S.W. boundary of lot No. 51, S. 46½° E. 6 chains and 10 links, to the north corner of lot No. 40, at the intersection of the N.W. boundary thereof with the S.W. boundary of lot No. 51; thence with the N.W. boundary of lot No. 40, S. 43½° W. 3 chains and 23⅓ links, to the west corner of lot No. 40; thence with the S.W boundary of lot No. 40, S. 46½° E. 4 chains 34 links, to the N.W. end of the N.E. edge of street E. on the S.W. boundary of lot No. 40; thence S. 43½° W. 66 feet to the N.W. end of the S.W. edge of street E., and the north corner of unclaimed lot E. 322 feet 8 inches, to the east corner of lot No. 31, at the intersection of the N.E. boundary thereof with the N.W. boundary of unclaimed lot E.; thence with the N.E. boundary of lot No. 31, N. 46½° W. 13 chains and 16 links, to the north corner of lot No. 31; thence with the N.W. boundary of lot No. 31, S. 43½° W. 3 chains and 88 links, to the west corner of lot No. 31, at the intersection with the N.W. boundary thereof with the N.E. boundary of lot No. 37; thence with the N.E. boundary of lot No. 37, N. 46½° W. 5 chains and 5½ links, to the north corner of lot No. 37; thence with the N.W. boundary of lot No. 37, S. 43½° W. 7 chains and 66 links, to the west corner of lot No. 37; thence with the S.W. boundary of lot No. 37, S. 46½° E. 6 chains and 67½ links, to the north corner of lot No. 67, at the intersection of the N.W. boundary thereof, with the S.W. boundary of lot No. 37; thence with the N. W. boundary of lot No. 67, S. 43½° W. 6 chains, to the west corner of lot No. 67; thence with the S.W. boundary of lot No. 67, S. 46½° E. 6 chains and 38 links, to the south corner of lot No. 67, on the N.W. boundary of lot No. 64;

thence S. 43½° W. 1 chain and 66 links, the west corner of lot No. 64, and north corner of lot No. 20, 7 chains and 61 links, the west corner of lot No. 20, and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence with the S. W. boundary of lot No. 48, S. 46½° E. 6 chains and 88 links, the point of intersection of the S.W. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east, of the the 4th principal meridian, which point is 13 chains and 93 links, N. 89½° W. of the corner of fractional sections 9 and 16 on the lake, 8 chains to the south corner of lot No. 48; thence with the S.E boundary of lot No. 48, N. 43½° E. 1 chain and six links, the point of intersection of the S. E. boundary of lot No. 48 with the section line between sections 9 and 16, township eight north, range 8 east, of the 4th principal meridian, which point is 12 chains and 38 links, N. 89½° W. of the corner to fractional sections 9 and 16 on the lake, 4 chains and 25 links, to the east corner of lot No. 48, on the S.W. boundary of lot No. 20; thence with the S.W. boundary of lot No. 20, S. 46½° E. 2 chains, to the south corner of lot No. 20; thence N. 43½° E. 5 chains and 95 links, the east corner of lot No. 20, and south corner of lot No. 64, 13 chains and 61 links, the east corner of lot No. 64, and south corner of lot No. 43, 21 chains and 27 links to the east corner of lot No. 43, and south corner of lot No. 34, at the S.W. end of the N.W. edge of Second street; thence S. 46½° E. 66 feet, the S.W. end of the S.E. edge of Second street, and west corner of lot 33, 386 feet 10 inches, the south corner of lot 33, 491 feet 1½ inches to the lower end of the S. E. edge of First street, on the N.W. bank of Lake Peoria; thence along the N.W. bank of Lake Peoria the following courses and distances: N. 38° E. 176 links; thence N. 42° E. 432 links; thence N. 17¾° E. 150 links; thence N. 78° E. 72 links; thence N. 47½° E. 417 links; thence N. 37° E. 188 links; thence N. 44¾° E. 2448 links, to the place of beginning. Then for connection with the public surveys, run from said place of beginning, along the N.W. bank of Lake Peoria, the following courses and distances: N. 44¾° E. 1081 links; thence N. 50¾° E. 1300 links, to the point of intersection of the section line, between sections 9 and 10, with the N.W. bank of Lake Peoria, which point is 2406 links, S. 0° 30′ W. of the corner, to sections 3, 4, 9, and 10, township 8 north, range 8 east, of the 4th principal meridian. Also, from the lower end of the S.E. edge of First street, the following courses and distances along the bank of the lake were taken for connection: S. 51¾° W. 198 links; thence S. 39° W. 819 links; thence S. 41¼° W. 216 links; thence S. 49½° W. 287 links; thence S. 85° W. 116 links, to the point of intersection of the section line, between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 2510 links, S. 89° 30′ E. of the corner, to sections 8, 9, 16, and 17, of said township.

Surveyed on the several days designated in the foregoing separate

descriptions of the lots, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved, this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI.
SAINT LOUIS, January 31st, 1854.

I certify that the foregoing plat of the new village of Peoria, and of such of the out-lots and field-lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out-boundaries of the said town, and continued connection of out-lots and field-lots situate in sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian, are correctly copied from the records of the surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

To the giving of said plats in evidence defendant objected, because they came from the wrong office. They ought to have been certified to by the commissioner of the General Land Office; but the court overruled said objection, and said plats were given in evidence to the jury.

5th. He then read to the jury an agreement of facts, which is as follows:

FORSYTH
v.
BRYAN & ROUSE.

SAME
v.
REYNOLDS.

SAME
v.
MCCLURE.

SAME
v.
KELLOGG.

It is agreed, that upon the trial of the above cases, that it shall be admitted that the plaintiff has the title of Thomas Forsyth in and to the land sued for by descent, and purchase, and conveyance; and

also that the defendants have had the actual possession of the land for which they are respectively sued, by residence thereon, for ten years next preceding the commencement of these suits; and that John L. Bogardus, under whom they claim, had possession of part of the S. E. fractional quarter of section nine, in township eight north, of range eight east, upon which the land sued for is situated, claiming the same under pre-emption right more than twenty years before the commencement of these suits, but he never had the actual possession of that part of said fractional quarter section sued for in these actions; and that said defendants respectively had vested in them, before the commencement of this suit, all the right, title, and interest which said Bogardus' possession, pre-emption right, and patent conferred on him.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

C. BALLANCE,
Attorney for Defendant.

6th. A patent from the United States to the legal representatives of Thomas Forsyth, which is as follows:

The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a certificate, numbered sixteen, of the register and receiver, at the land office at Edwardsville, Illinois, whereby it appears that in the report, dated 10th November, 1820, of Edward Coles, register of the land office at Edwardsville, Illinois, the claim of Thomas Forsyth, under John Baptist Maillet, and in right of his own occupancy and cultivation, is entered as number seven; and whereas it further appears, from the certificate aforesaid, that the said John Baptist Maillet is the inhabitant or settler within the purview of the confirmatory act of Congress, approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," and that it has appeared, to the satisfaction of the said register and receiver, that the said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive a confirmation of claims, or donation of any tract of land, or village lot, from the United States; and that the legal representatives of the said Thomas Forsyth under said Maillet, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot described as follows, to wit: The lot containing one hundred and two thousand nine hundred and thirty-three square feet and ninety-three hundredths of a square foot, surveyed and designated as covered by said claim number seven, excluding therefrom the tract or portion of said lot containing twenty-seven thousand four hundred and forty-nine square feet and seven-hundredths of a square foot, covered by claim numbered fourteen, of Jacques Mette,

also under said Maillet. Said claim, number seven, being situated in the southeast fractional quarter of fractional section nine, in township eight north, of range eight east, of the fourth principal meridian, Illinois, according to the survey, approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri. And whereas in the confirmatory act aforesaid, of the 3d March, 1823, it is provided, that "nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatsoever," &c. Now know ye, that in the consideration of the premises, and pursuant to the second section of the act aforesaid of the 3d March, 1823, there is granted, by the United States to the legal representatives of the said Thomas Forsyth, and to their heirs, subject to the proviso aforesaid, the lot of land above described, as covered by the said claim number seven, but expressly excluding therefrom the portion of the said lot covered by claim number fourteen aforesaid. To have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Thomas Forsyth, and to their heirs and assigns, forever, subject to the proviso and exclusion aforesaid.

In testimony whereof I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the sixteenth day of December, in the year of our Lord one thousand eight hundred and forty five, and of the independence of the United States the seventieth.

By the President.

[SEAL.] JAMES K. POLK.

By J. KNOX WALKER,
Secretary.

S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded, vol. 10, pages 97 and 98.

Defendant then, to maintain the issue on his part, read to the jury—

1st. A letter and certificate of the register of the land office at Quincy, which is as follows:

LAND OFFICE, QUINCY, ILLINOIS, Nov. 17th, 1832.

SIR,—Yours of the 31st ultimo was duly received, and, in reply thereto, I have to say that your proof of a pre-emption has been duly received, previous to the 5th of October, partly by Mr. Bigelow and partly by mail, which were adjudged in this office to be sufficient.

Very respectfully, your humble and obedient servant,

SAML. ALEXANDER.

JOHN L. BOGARDUS, Esq.

LAND OFFICE, QUINCY, January 4th, 1833.

I hereby certify that on the 4th day of August, 1832, John L. Bogardus, of Peoria, in the State of Illinois, filed in this office evidence of his right of pre-emption to the southeast fractional quarter of section nine, in township eight north, range eight east, of the fourth principal meridian, under the act of Congress of April 5th, 1832.

SAML. ALEXANDER,
Register.

2d. He then read to the jury a certificate of entry, which is as follows:

LAND OFFICE, QUINCY, ILL., 15th November, 1837.

It is hereby certified that John L. Bogardus, of New York, did this day enter or purchase the southeast fractional quarter of section No. 9, in township No. 8 north, of range No. 8 east, of the fourth principal meridian, containing twenty-three $\frac{93}{100}$ acres, as appears of record in this office.

SAMUEL LEECH,
Register.

3d. He then introduced a patent to John L. Bogardus, which is as follows:

Certificate No. 13,258.

The United States of America, to all to whom these presents shall come, greeting:

Whereas John L. Bogardus, of New York, county New York, has deposited in the General Land Office of the United States a certificate of the register of land office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southeast fractional quarter of section nine, in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing twenty-three acres and ninety-three hundredths of an acre, according to the official plat of the survey of the lands returned to the General Land Office by the surveyor-general; which said tract has been purchased by the said John L. Bogardies.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John L. Bogardus and to his heirs, the said tract above described, to have and to hold the same, together with all and singular the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging,

unto the said John L. Bogardies and to his heirs and assigns, forever; subject, however, to all the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

By the President.

MARTIN VAN BUREN. [SEAL.]

By A. VAN BUREN,

Secretary.

H. M. GARLAND,

Recorder of the General Land Office.

Recorded, vol. 1, page 149.

4th. He then proved, by E. N. Powell, Esq., that he had resided in Peoria, since May, 1836; that he has all that time been a practising lawyer. That Isaac Underhill, and those claiming under him, have, during that time, had many lawsuits in defence of their claim to the southeast fractional quarter of section nine, in township eight north, of range eight east, of the fourth principal meridian. That in all those controversies he and they constantly claimed said land in their own right, and adversely to all others. That before he came to Peoria, Isaac Underhill had bought said land of John L. Bogardus, who claimed a pre-emption to it under the pre-emption law of April 5th, 1832, and that Isaac Underhill, afterwards, on the 15th of November, 1837, entered said land in the name of said Bogardus. The deed from said Bogardus was dated some time in the year 1834. It was placed in his possession to enable him to defend said suits, and he has had the possession of it for many years.

In answer to a question from plaintiff, he said, the patent issued to said Underhill, in the name of said Bogardus, had in it this clause: "Subject to the rights of all persons claiming under the act of Congress of 3d March, 1823." And that said Underhill and one Bigelow surveyed said tract of land, in the year 1836, into town lots, and in the title bounds they bound themselves to make deeds warranting against all persons except such as might hold under the said law of 1823.

In answer to a question by defendant, he said although said Bigelow received said patent containing said clause, that he and those

who claimed under, continued to hold as they had done, claiming to hold adversely to any one.

Defendant then asked the court to instruct the jury, that the title exhibited by defendant is a better title at law than the title exhibited by plaintiff, and therefore plaintiff cannot recover.

2d. That Thomas Forsyth, having received two confirmations of claims from the United States, is expressly excluded from the benefit of the act of 3d March, 1823.

3d. That the title under which defendant claims the property in controversy, is a title deduceible of record from the United States, and as plaintiff admits defendant to have been in possession more than seven years before this suit was commenced, plaintiff is barred by the Illinois statute of limitations.

Which instructions the court refused to give, but instructed the jury, as follows:

1st. That the entry and patent of Bogardus, dated January 5th, 1838, for the fractional quarter section mentioned therein, were subject to the rights of any and all persons claiming under the act of Congress of March 3d, 1823, so that no one claiming under the patent, and by virtue thereof, could claim under the statutes of limitations for seven years, to have entered into the possession under claim or color of title of lot seven. The patent to Bogardus did not cover, and was not intended to cover lot seven, granted by the act of 1823.

2d. That if that part of lot 7, in controversy in this case, was entered by the defendant and those through whom he claimed, and the possession held under a title subject to the title of these French claims, as granted by the act of 1823, they cannot be said to have entered and be possessed adversely, so as to be protected by the statutes of limitations.

3d. That the statutes of limitations could not begin to run before September 1st, 1840, when the survey was approved.

4th. If the defendant, or those under whom he claims, have been possessed of the land under a title adverse or in hostility to the title of these French claims, under the act of 1823, for seven successive years, and had paid the taxes for that time, he might be protected under the statutes.

To all which instructions, rulings, and decisious of the court, defendant then and there excepted, and prayed that this, his bill of exceptions, be sealed, signed, and made of record, which is done.

It was further admitted, that the property in dispute was worth more than two thousand dollars. And the above was all the evidence in the case.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Indorsed: Filed, August 6th, 1856. Wm. H. Bradley, clerk.

And on the 4th day of August, in the July term, A.D. 1856, of said Circuit Court, said defendant, by his attorney, filed in open court, with the clerk thereof, an appeal bond, in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Illinois. July Term, 1856.

ROBERT FORSYTH
v.
WILLIAM KELLOGG. } In Error.

Know all men by these presents, that we, William Kellogg and Charles Ballance, are held and firmly bound unto the above-named Robert Forsyth, in the sum of two thousand dollars, to be paid to the said Robert Forsyth, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the 31st day of July, 1856.

Whereas the above-named William Kellogg hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit, by the Circuit Court of the United States for the Northern District of Illinois. Now, therefore, the condition of this obligation is such, that if the above-named William Kellogg shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

WILLIAM KELLOGG, [SEAL.]
By his attorney in fact,
C. BALLANCE. [SEAL.]

C. BALLANCE. [SEAL.]

Sealed and delivered
in presence

Security approved.

THOMAS DRUMMOND.

Indorsed: Filed August 4th, 1856. William H. Bradley, clerk.

And on the 29th day of July, A.D. 1856, the said defendant, by his attorney, filed in said court, with the clerk thereof, his writ of error, in the words and figures following, to wit:

United States of America, Northern District of Illinois, *ss.*

The United States of America, to the Judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court, before you, between Robert Forsyth against William Kellogg, a manifest error hath happened, to the great damage of the said William Kellogg, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf. You are therefore commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error what of right, and according to the law and custom of the United States should be done.

[SEAL.] Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th day of July, A.D. 1856, and of our independence the 81st year.

WM. H. BRADLEY,
Clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify that the foregoing transcript to be a full, true, and perfect copy from the record of all the proceedings which have been had in said court in said cause of Robert Forsyth *v.* William Kellogg, as the same now appears in my office.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said District, this twenty-fifth day of October, A.D. 1856.

WILLIAM H. BRADLEY,
Clerk.

Said plaintiff in error comes, when, &c., and says, that in said record and proceedings there is manifest error in this, to wit:

1st. Said court erred in trying said cause without a jury.

2d. Said court erred in refusing to set aside said judgment and grant a new trial, at common law, because of said error.

3d. Said judgment is erroneous in having the amount of the costs, both dollars and cents, in blank.

4th. Said court erred in permitting a part of said printed book, called 3d Volume of American State Papers, to be read to the jury.

5th. The court erred in permitted said plats to be given in evidence to the jury without other authentication than they were accompanied with.

6th. Said court erred in refusing to give to said jury, instructions asked for by defendant below.

7th. Said judgment ought to have been in favor of said defendant below, and not in favor of said plaintiff below.

For and in consideration whereof, said plaintiff in error prays that said judgment may be set aside, disannulled, and for nothing esteemed.

C. BALLANCE,
For Plaintiff in Error.

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT FORSYTH
v.
WILLIAM KELLOGG.

I, Charles Ballance, do solemnly swear, that since the decision of the above-entitled cause in this court, the above-named William Kellogg died without ever having been married. That I was intimately acquainted with him, and never knew or heard of his having had any offspring of any kind. I have been informed and believe, that his father is dead; but that his mother, Mary E. Kellogg, is still alive; and that he has still living four brothers, whose names are Henry M. Kellogg, Uriel H. Kellogg, John G. Kellogg, and Orchard G. Kellogg. That said William once had a brother, named Frederick W. Kellogg, who is now dead; but who, on dying, left one and only one child, named Caroline Kellogg, who is still alive. Said William also had two sisters, who are still alive; one of them is named Mary C. Parker, and is now the wife of Timothy Parker; and the other is named Margaret N. Kellogg, and was never married. I have been informed, upon diligent inquiry, and believe the information to be true, that the above are the heirs-at-law of said William Kellogg; and that he has no other brother or sister or descendant of a brother or sister alive. And further affiant saith not.

C. BALLANCE.

State of Illinois, City of Peoria.

I, Frederick A. King, a notary public in and for the city of Peoria, do hereby certify, that on the ninth day of July, A.D. 1859, personally appeared before me, at my office, in Peoria aforesaid, the above-named Charles Ballance, and made oath to the truth of the above statement.

[SEAL.] FREDERICK A. KING,
Notary Public.

Indorsed: Filed July 15th, 1859. Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the foregoing to be a true and correct copy of the original affidavit filed in my office by Charles Ballance, in the said cause of Robert Forsyth *v.* The heirs-at-law of William Kellogg, deceased, as the same now remain in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at my office in Chicago, in [SEAL.] said Northern District of Illinois, this sixteenth day of August, A.D. 1859.

WM. H. BRADLEY,
Clerk.

The United States of America, Northern District of Illinois, *ss.*

Circuit Court United States, Northern District of Illinois, to wit:

ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIEL H. KELLOGG, JOHN G. KELLOGG, ORCHARD G. KELLOGG, MARY E. KELLOGG, CAROLINE KELLOGG, MARGARET N. KELLOGG, TIMOTHY PARKER and MARY C. PARKER, late MARY C. KELLOGG, heirs-at-law of WILLIAM KELLOGG, deceased. } Ejectment.

Be it remembered, that on the fifteenth day of July, eighteen hundred and fifty-nine, said defendants, by Charles Ballance, Esq., their attorney, sued out of the office of the clerk of the Circuit Court of the United States, for the Northern District of Illinois, a writ of error in the above-entitled cause, which said writ, together with the bond in appeal filed therein, reads in the words and figures following, to wit:

United States of America, Northern District of Illinois, *ss.*

The United States of America, to the Judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said court before you, between Robert Forsyth and against William Kellogg, a manifest error hath happened, to the great damage of the said William Kellogg in his lifetime, and his heirs-at-law now that he is dead, as by the complaint of Henry M. Kellogg, Uriel A. Kellogg, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker and Mary C. Parker, his wife, late Mary C. Kellogg, appears. And it being fit that that error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the said record and proceedings being inspected, the said Supreme Court may cause to be further done therein, to correct that error, what of right and according to the law and the custom of the United States should to be done.

Witness the Honorable Roger B. Taney, chief justice of the [L. S.] Supreme Court of the United States, this fifteenth day of July, A.D. 1859, and of our independence the 84th year.

WM. H. BRADLEY,
Clerk.

Indorsed: Filed July 15th, 1859. Wm. H. Bradley, clerk.

Bond.

HENRY M. KELLOGG et al., heirs-at-law of WILLIAM KELLOGG, deceased,
v.
ROBERT FORSYTH.
} In Error.

To the United States Circuit Court, for the Northern District of Illinois. July Term, A. D. 1859.

Know all men by these presents that we, Charles Ballance and Samuel Voris are held and firmly bound unto the above-named Robert Forsyth, in the sum of two hundred dollars, to be paid to the said

Robert Forsyth, and to his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us bind our heirs, executors and administrators firmly by these presents, sealed with our seals, and dated this 11th day of July, 1859.

Provided, however, and this obligation is upon the express condition, that whereas the above-named heirs at law of William Kellogg, deceased, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by said Circuit Court in the above cause in favor of said Robert Forsyth, when the title was Robert Forsyth *v.* William Kellogg. Now, therefore, the condition of this obligation is such, that if the above-named heirs of said William Kellogg shall prosecute their said writ of error to effect, and shall pay all costs if they shall fail to make good their plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

C. BALLANCE. [SEAL.]
SAMUEL VORIS, [SEAL.]
By his attorney in fact,
C. BALLANCE. [SEAL.]

Signed, sealed and delivered in presence of

Indorsed: Approved, Thomas Drummond. Filed July 15, 1859. Wm. H. Bradley, clerk.

And afterwards, to wit, on the fifteenth day of July, eighteen hundred and fifty-nine, a citation issued in said cause, which said citation and the indorsement of service thereon reads as follows, to wit:

United States of America, *ss.*

To Robert Forsyth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Henry M. Kellogg and others, heirs at law of William Kellogg, deceased, are plaintiffs, and you are defendants, in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, one of the justices of said court, this fifteenth day of July, A. D. 1859.

THOMAS DRUMMOND.

I, Lysander R. Webb, do solemnly swear that on the ninth day of August, 1859, I served the above citation on Robert Forsyth, by giving to him in the city of Peoria, a correct copy thereof.

LYSANDER R. WEBB.

State of Illinois, City of Peoria, *ss.*

I, Frederick A. King, a notary publick of said city, do hereby certify that on the ninth day of August, 1859, the above Lysander R. Webb personally appeared before me, and made oath to the truth of the above statement, to which is named is subscribed.

[L. S.] FREDERICK A. KING,
Notary Public.

Indorsed: Filed August 10th, 1859. Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States, for the Northern District of Illinois, do hereby certify the above and foregoing is a full, true, and complete transcript of the writ of error sued out of said court in the cause wherein Henry M. Kellogg and others, the heirs at law of William Kellogg, deceased, are plaintiffs in error, and Robert Forsyth, defendant in error, together with the bond in appeal, and citation filed thereon, as the same appears from the originals now on file in my office and remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office, in Chicago, this eleventh day of August, eighteen hundred and fifty-nine, and of our independence the eighty-fourth year.

WM. H. BRADLEY,
Clerk.

Indorsed: N. Illinois, C. C. U. S. No. 79. Henry M. Kellogg, Uriel H. Kellogg, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, and Timothy Parker, and Mary C., his wife, heirs at law of William Kellogg, dec'd, plaintiffs in error, *v.* Robert Forsyth. Filed 3d Oct., 1859.

389